

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

|                                 |   |                  |
|---------------------------------|---|------------------|
| IN RE: NATIONAL FOOTBALL LEAGUE | ) | 12-MDL-2323-AB   |
| PLAYERS' CONCUSSION INJURY      | ) |                  |
| LITIGATION                      | ) |                  |
|                                 | ) |                  |
|                                 | ) |                  |
|                                 | ) |                  |
| Kevin Turner and Shawn Wooden,  | ) | Philadelphia, PA |
| on behalf of themselves and     | ) | August 14, 2018  |
| others similarly situated,      | ) | 10:39 a.m.       |
|                                 | ) |                  |
| Plaintiffs,                     | ) |                  |
|                                 | ) |                  |
| vs.                             | ) |                  |
|                                 | ) |                  |
| National Football League and    | ) |                  |
| NFL Properties, LLC,            | ) |                  |
| successor-in-interest to        | ) |                  |
| NFL Properties, Inc.,           | ) |                  |
|                                 | ) |                  |
| Defendants.                     | ) |                  |
|                                 | ) |                  |

TRANSCRIPT OF FUNDER'S CONFERENCE  
BEFORE THE HONORABLE ANITA B. BRODY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

|                                     |  |
|-------------------------------------|--|
| For Kevin Turner,<br>et al.:        | TERRIANNE BENEDETTO, ESQUIRE<br>SEEGER WEISS, LLP<br>6th Floor<br>55 Challenger Road<br>Ridgefield, NJ 07660               |
| For Plaintiffs Ron<br>Solt, et al.: | GENE LOCKS, ESQUIRE<br>LOCKS LAW FIRM<br>37th Floor<br>747 Third Avenue<br>New York, NY 10017                              |
| For National<br>Football League:    | SEAN P. FAHEY, ESQUIRE<br>PEPPER HAMILTON, LLP<br>3000 Two Logan Square<br>18th and Arch Streets<br>Philadelphia, PA 19103 |

## APPEARANCES: Continued

Special Master: JO-ANN M. VERRIER, ESQUIRE  
UNIVERSITY OF PENNSYLVANIA LAW  
SCHOOL  
3501 Sansom Street  
Philadelphia, PA 19104

Claims Administrator: ANDREW OXENREITER, ESQUIRE  
BROWNGREER, PLC  
250 Rocketts Way  
Richmond, VA 23231

Audio Operator: JAMES F.G. SCHEIDT

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC  
P.O. Box 129  
Gibbsboro, New Jersey 08026  
Office: (856) 435-7172  
Fax: (856) 435-7124  
Email: dianadoman@comcast.net

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

I N D E XPROPOSAL/PRESENTATION:PAGE

By Mr. Locks

4

1 (The following was heard at 10:39 a.m.)

2 THE COURT: I've designated this as a funder's  
3 conference and I will introduce some of the principals who are  
4 here that will be presenting. Gene Locks, who's class  
5 counsel; Jo-Ann Verrier, who is my Special Master; Andrew  
6 Oxenreiter, who is from BrownGreer who's representing the  
7 Administrator; and Terri Benedetto, who's co-class counsel.

8 All right, Mr. Locks, why don't you tell us where  
9 you -- how far you've gotten and tell me -- give me some  
10 background.

11 MR. LOCKS: Okay. Your Honor, of course for the  
12 record, my name is Gene Locks. I am one of the class counsel  
13 and I was asked to do some research on behalf of the Court as  
14 to the nature and extent of funding transactions among the  
15 class.

16 As a background, I have been able to ascertain there  
17 are somewhere slightly more than 20, maybe as many as 25 or 4  
18 funders who have made some type of financial transactions with  
19 players. I have talked to almost every one. There are one or  
20 two names that I've just recently learned.

21 What I've learned so far among the group that I've  
22 spoken to which exceeds 20 -- 22 funders, there are  
23 approximately 500 or plus funding transactions with players.  
24 There's a certain amount of difficulty in computing that  
25 because in some situations, one funder and another funder

1 participate, but at least -- at least more than 500 players  
2 have some type of funding transaction.

3 Approximately 150 of those transactions are not  
4 assignment transactions as defined in the -- by the Court and  
5 the settlement agreement, but they are loans that are not  
6 technically assignments.

7 Most of these occurred after final approval of the  
8 settlement and that's common, not unusual in mass torts in  
9 anticipation of the distribution of funds to players. Most of  
10 the funders -- and I know of none in this room -- that are not  
11 reputable business people in what they do.

12 There are some funders that I don't know who have at  
13 different times in collaboration with some attorneys  
14 occasionally who have made certain types of transactions which  
15 I'm not able to track, but the folks here have made, in their  
16 minds, legitimate financial transactions.

17 However, most of the funders were pretty misinformed  
18 about the procedure and the process in how the settlement was  
19 going to distribute funds. They were not well informed as to  
20 who may or may not get a monetary award.

21 They were misled by some less than candid attorneys  
22 on behalf of attempting to market and there were a number of  
23 transactions by certain attorneys suggesting to certain  
24 funders that A, B and C might happen or how they would get  
25 marketing for the funder, as well as for themselves, to get

1 clients.

2 THE COURT: Have they taken any -- as far as you  
3 know, have they taken any action against lawyers whom they  
4 believe have misled them? Do you -- are you aware of that?

5 MR. LOCKS: At the present moment I am not aware of  
6 any of the funders in this room actually taking any action  
7 against any -- shall I say incomplete or perhaps -- well, let  
8 me just use the word "incomplete" information from the source.

9 THE COURT: Okay.

10 MR. LOCKS: I believe, and interestingly, many of  
11 these funders have less than complete records as to whether or  
12 not the people they've written checks to have lawyers or which  
13 lawyers because there have been a number of players who moved  
14 from one lawyer to another lawyer to another lawyer.

15 Most of these funders do not even know how in the  
16 process of monetary awards that they would get notice or to be  
17 aware that they had the possibility of collecting from the  
18 player because they didn't -- sometimes the player wouldn't  
19 inform them and sometimes --

20 THE COURT: Well, lots of the lawyers signed.

21 MR. LOCKS: I know, and lots of the times that  
22 lawyer who signed no longer represents that player and that  
23 player doesn't know who he got the funding from and there were  
24 occasions where literally the funder had no idea that a player  
25 got an award and couldn't find the lawyer, and there are

1 examples that I've learned from each of the different funders  
2 that -- a little bit of a sad commentary on some of the  
3 behavior of some people in the system. But in any event, they  
4 were not deliberately misled all the time, but they were  
5 occasionally.

6 And because some of those attorneys used funding for  
7 marketing purposes, again, they would come to a player and say  
8 I can get you some funding, you should come to me as the  
9 attorney, and then the funder would know the history or maybe  
10 not know the history, but there's clear -- in many instances  
11 there were people who were not forthright to the funder or the  
12 player.

13 Now, at some times, lawyers who -- well, I'll call a  
14 little more candid and a little more informed -- had to  
15 respond to pressures from the players who had been solicited  
16 by funders -- not funders, by other lawyers that you come to  
17 me and I'll get you money and so on.

18 I want to make it clear though that in many  
19 instances, the need of the player and the advancement of funds  
20 provided liquidity and benefits to the player because he might  
21 have had an IRS claim to pay, he might have had in some  
22 instances a -- support liens to pay, he might have had  
23 mortgage payments to pay and there were legitimate reasons for  
24 many of these transactions because of the need of the players.  
25 And I can probably give a lot more examples than what I just

1 told you, but those are common.

2 Now in the actual experience so far, approximately  
3 30 or so -- it's a little less, a little more -- changes every  
4 month. Monetary awards have been issued to players who have  
5 funding arrangements and they have been precessed by  
6 BrownGreer and many of the transactions have been repaid, some  
7 with recision, some with being loans and not prohibited  
8 transactions.

9 But, there have been some problems and there will  
10 continue to be some problems without some of the  
11 recommendations that I think I am going to make today  
12 concerning how it should be processed and handled in the  
13 future.

14 Now, I want to make it clear, I represent players  
15 and as class counsel my first duty and responsibility I  
16 believe is to the players. And the proposals that I'm making  
17 I believe are to the benefit of the players.

18 I believe it in the sense that whatever the  
19 financial transaction, they will get some type of discount or  
20 substantial compromise of whatever papers they've signed under  
21 the proposal that I'm going -- I'm going to recommend.

22 They avoid -- the player will avoid the litigation  
23 risk. Under the present system the risk of a funder to go  
24 after the player legally in some form or fashion is a risk for  
25 dispute resolution, and the player will have an opportunity if



1 he doesn't like this proposal to object at the end of the day,  
2 and at least that's kind of better than it is right now.

3 As to the funders, I believe this is very helpful.  
4 Number one, the suggestion is that they will get notice, which  
5 they don't always get right now. They have a method  
6 internally for dispute resolution without having to chase or  
7 go around in the proposal that we're making.

8 They have an ability -- not they have an ability --  
9 there is built in a distribution protection wherein if there's  
10 a dispute, the money is not paid to the player but the money  
11 is retained by BrownGreer until there's a resolution of the  
12 dispute.

13 There's no more problem which has occurred at the  
14 moment in the recision transaction or two where money was paid  
15 to the player because there was no recision and never got paid  
16 to the funder. Your Honor has certainly seen at least one of  
17 those in front of her and hopefully under this --

18 THE COURT: I believe that was retained by  
19 BrownGreer.

20 MR. LOCKS: At that time. But there's another one  
21 where it was not retained by BrownGreer and the player -- the  
22 player received the money and the funder had to chase the  
23 player. And the proposal that I'm making and the declaration  
24 and the protocol that will be handled by BrownGreer will  
25 hopefully prevent the need for any of that and any involvement

1 with the Court having to decide the disputes.

2 Now, I'll go through that in a -- in a minute or two  
3 when I talk about the actual proposal. From the  
4 administration point of view, it's going to be much simpler.  
5 They won't have to do some of the things they're trying --  
6 they're doing now to ascertain how and what to be involved in  
7 the funding.

8 It will be presented in a way where they don't have  
9 to read 40 different funding agreements to try to see what the  
10 language is to try to see whether it's a prohibited assignment  
11 or the terms and circumstances.

12 They will already know under the proposal that so-  
13 and-so has a transaction, player with a funder and they don't  
14 have to re-read documents. They won't have any essentially  
15 involvement in the interpretation of the documents because  
16 they will either have been approved or not with the proposal  
17 that we're making.

18 As far as any issue from the administration point of  
19 view that doesn't get resolved, the procedure (inaudible) the  
20 ball to the Special Master and the Special Master will resolve  
21 the dispute.

22 And in my view, 99 percent of the dispute between  
23 the player and the funder under my proposal is simply going to  
24 be calculation of how much interest it is -- saying it's 30  
25 months or 22 months or something in a mechanical thing. It's

1 not going to have to go into the legal issues.

2 Now lastly, from the Court's point of view, you  
3 should have no litigation with funders and players anymore.

4 THE COURT: Well, I'll always have the ones that  
5 didn't --

6 MR. LOCKS: You always have the ones that may arise  
7 to a certain level, but generally almost you're not going to  
8 have to be involved except in very unusual circumstances.

9 THE COURT: Well, the one thing that you haven't  
10 said which I'm sure that you'll understand and I think  
11 everybody in this courtroom understands is that I may have to  
12 impose a settlement if people are not taking a settlement and  
13 not -- and I --

14 MR. LOCKS: Yes.

15 THE COURT: -- that's something that I've very  
16 seriously considered and I think I've tipped my hand on that.

17 MR. LOCKS: Yeah, well --

18 THE COURT: So that's down the pike.

19 MR. LOCKS: Hopefully it won't have to be utilized  
20 very often.

21 THE COURT: Okay, good.

22 MR. LOCKS: Now, essentially there are certain  
23 documents that have been submitted to all the funder here  
24 except one or two that I overlooked. There's a document --  
25 the most important one, which is a Declaration of Consent to

1 Substitution.

2 THE COURT: And would you like to make this part of  
3 the record or would you rather not?

4 MR. LOCKS: Your Honor, these --

5 THE COURT: I'll bow to your --

6 MR. LOCKS: -- these are hopefully 98 percent  
7 drafts --

8 THE COURT: Okay.

9 MR. LOCKS: -- and there will be a little more  
10 editing. They are official documents that will be filed with  
11 BrownGreer, the claims administrator.

12 THE COURT: Okay, good.

13 MR. LOCKS: But in effect, a funder who signs this  
14 declaration is in effect converting their assignment  
15 transactions voluntarily to 10 percent loans.

16 Under the agreement, under this draft, they will  
17 submit to BrownGreer a list of all of the players who they  
18 have advanced monies to and the amounts and the dates, and  
19 BrownGreer will be able to put that into their system so that  
20 when and if some of those players are lucky enough to get a  
21 monetary award, that funder will get notice.

22 And therefore at that point, he will have the  
23 opportunity to have this 10 percent loan transaction, which is  
24 the substitution of the assignments that have been prohibited,  
25 paid and taken care of.

1           He will -- they will of course get a release. Their  
2 release will also be the equivalent of a termination statement  
3 of all prior documents and they'll get a release from the  
4 player and the player of course will get a release from them  
5 and all of the prior documents are going to be history because  
6 of that release, which will be filed with BrownGreer who will  
7 then pay what's called the resolution amount, which is the  
8 money advance plus 10 percent from the date of the  
9 transaction.

10           The resolution amount will obviously change over the  
11 course of time as the 10 percent grows -- you know, if it's a  
12 year from now or six months or whatever.

13           From the BrownGreer point of view, there is a  
14 proposal which is internal which is called a Third-party  
15 Funding Resolution Protocol, and that essentially will tell  
16 how BrownGreer will implement the substitution agreements and  
17 this has been gone over with BrownGreer and the Special  
18 Master.

19           We have attempted to make it a convenient and  
20 streamlined document. It may very well become a rule and  
21 regulation under the manner in which dissemination of  
22 information goes out from the Trust, or it may just be an  
23 internal method of working, and that's subject to their  
24 recommendation when it's done. But it clearly allows the  
25 third-party funder who participates in the resolution protocol

1 to get notice when and if one of their borrowers gets money.

2 THE COURT: I assume that this has been given to Ms.  
3 Benedetto?

4 MR. LOCKS: Yes.

5 THE COURT: Okay.

6 MR. LOCKS: And -- and of course the Special Master  
7 and Mr. Oxenreiter and everybody else there. We've gone over  
8 it, it is something that they believe and I believe makes  
9 their life simpler, that it will be not something that will be  
10 adversarial, except it does provide for what happens if in  
11 fact there is a dispute with the player over the actual  
12 quantity of the amount that should be paid.

13 The protocol will label each player with the name of  
14 the funder, so when the player gets his award the funder's  
15 name will be there and BrownGreer will have that and notify  
16 them.

17 Now, if in fact -- and this is a rather significant  
18 one -- well I'm not there yet -- the payments made to the  
19 funder as I pointed out before, will have to have a  
20 termination and release so that the player and the funder are  
21 ending any possible involvement going forward.

22 But, it's possible that they don't come to an  
23 agreement on what the resolution amount might be between the  
24 funder and the player, or the biggest concern of funders and a  
25 justifiable concern is that suppose the player says I don't

1 care what you've done, I don't -- I don't want to participate.

2 Well, under those circumstances all I can say,  
3 Judge, is if the player is silly enough or his lawyer's silly  
4 enough not to recommend this compromise on the substitution  
5 agreement of the prohibited assignments, I don't think much of  
6 the lawyer or the player's ability but they're entitled to do  
7 that.

8 And then the funder unfortunately is exactly where  
9 he is today, he's got somebody who doesn't pay him and he has  
10 to do whatever he thinks he has to do. I do not think that  
11 will happen very often, if at all.

12 I've had discussions among members of the plaintiff  
13 bar of what they would recommend to their players if these  
14 declaration of substitution and 10 percent interest is paid as  
15 a loan, what they would recommend to their players.

16 And I have gotten unanimous consent from everyone  
17 I've talked to, at least half of them who filed reports to the  
18 Court when you asked for them -- Alex, I'm looking at you, I  
19 can't remember when they were asked for but we had to give  
20 them to the Court. But most of them are in support and will  
21 recommend to their players that they go along.

22 THE COURT: Did you speak with -- did you speak with  
23 Ms. Benedetto about this?

24 MR. LOCKS: Oh, absolutely.

25 THE COURT: Okay.

1 MR. LOCKS: Now, if there's not an agreement on the  
2 resolution amount that's been offered, then it will go to the  
3 Special Master and they'll calculate what the agreement says.  
4 I think it as good a solution as can be made.

5 I think it will work in everyone's self-interest --  
6 in everyone's interest, even including if you have a self-  
7 interest that you think is different than somebody else's. I  
8 believe of the 22 funders that I've spoken to, 19 or 18  
9 depending on interpretation, have presently prohibited  
10 assignments under Your Honor's ruling.

11 At least six or eight of those funders have agreed  
12 with this proposal and signed or are willing to sign the draft  
13 protocol. Even though it's 99 percent complete, there's a  
14 couple wrinkles. I believe six or so more of those funders,  
15 after they sort through this a little more, will probably  
16 sign.

17 Preliminary conversations seemed to be that way.  
18 Apparently there are three or four funders who have appealed  
19 the award and I can't speak for them, their lawyer's here, I  
20 don't talk to their funders, but I don't know what they're  
21 going to do.

22 Of the other three or four, they have loan  
23 transactions, not assignments. But, if their loan  
24 transactions are not acceptable, they have the option if they  
25 want to join this protocol with their loan and accept 10



1 percent.

2 THE COURT: Okay.

3 MR. LOCKS: If they don't, they can -- whatever.

4 THE COURT: Well, of course you know there is an  
5 industry -- and I'll say this in open court -- I -- it would  
6 seem to me and I certainly can't speak for the loan -- the  
7 lenders, but there seems to be -- it seems to me that there is  
8 a real industry interest in seeing that this is resolved  
9 amicably and that this would be helpful to the industry  
10 because the alternative is certainly my imposing upon it --  
11 upon everyone.

12 And I think that that is a less valuable and a less  
13 helpful resolution for the industry -- I'm talking about the  
14 funder industry. I mean, you don't have to comment on that,  
15 please.

16 MR. LOCKS: Well, I endorse that. I completely  
17 agree.

18 THE COURT: I --

19 MR. LOCKS: I think that it's totally appropriate  
20 for compromises to be made and I believe the recommendations  
21 I've made are fair and reasonable. And if one funder doesn't  
22 think that my recommendation of 10 percent is not fair, God  
23 bless, he can do what --

24 THE COURT: Well, and that might be --

25 MR. LOCKS: -- he thinks he can do.

1           THE COURT:  -- and that also might be a signal to me  
2 by a certain number of funders being willing to compromise on  
3 this that this is in fact a reasonable resolution if I find  
4 that it's important for me to -- to impose such a --

5           MR. LOCKS:  Your Honor --

6           THE COURT:  -- such a --

7           MR. LOCKS:  -- I recommend, because it's up til now  
8 not been an opportunity for this Court to see, but I recommend  
9 the opportunity to allow some of the funders or any -- all of  
10 the funders to sit in and -- and you meet them --

11          THE COURT:  I'm going to do just that.

12          MR. LOCKS:  -- and you can hear their concerns.  If  
13 they have more concerns than --

14          THE COURT:  That will not be on the record.

15          MR. LOCKS:  No, no --

16          THE COURT:  I will do that --

17          MR. LOCKS:  -- that's fine.

18          THE COURT:  -- I will do that in chambers.  Yes,  
19 that's --

20          MR. LOCKS:  Anyway --

21          THE COURT:  -- but I certainly -- yes, I appreciate  
22 that, I appreciate your looking into this, Mr. Locks, and I  
23 appreciate your presentation.

24          MR. LOCKS:  Thank you.

25          THE COURT:  Okay.  All right, would you like to say

1 whom you think I might -- I'd like you to tell me whom you  
2 think it would be most helpful for me to meet with privately  
3 in my chambers at this time. Would you like to tell me which  
4 funders you think would be helpful?

5 MR. LOCKS: Sure. I would like to suggest anybody  
6 who'd like to, make sure they go back. I would -- since I've  
7 talked to some of you a little more extensively than others, I  
8 would -- I would recommend --

9 THE COURT: Okay, I have a sheet of everybody who's  
10 here.

11 MR. LOCKS: Yeah.

12 THE COURT: I appreciate that.

13 MR. LOCKS: I would recommend Mark, Jeff, Sean,  
14 William Bray. I don't know the faces, I know the names of the  
15 companies that some of the -- that we've had --

16 MR. PACCIONE: Cowen & Company, Anthony  
17 Paccione --

18 MR. LOCKS: Yeah --

19 MR. PACCIONE: -- accountant.

20 MR. LOCKS: -- okay. And then --

21 THE COURT: I'm going to in the back --

22 MR. LOCKS: Well, I think that the first --

23 THE COURT: Gene --

24 MR. LOCKS: Yes.

25 THE COURT: -- I'm going to go into the back.

1 MR. LOCKS: Yes.

2 THE COURT: You can do this out of my hearing --

3 MR. LOCKS: Yes, okay.

4 THE COURT: -- so that might be helpful. Okay? And  
5 same with -- well, you're coming back, Terri.

6 MS. BENEDETTO: Yes, Your Honor.

7 THE COURT: Okay, good.

8 COURTROOM DEPUTY: All rise.

9 (Off the record)

10 THE COURT: What I'm back here on is that I did find  
11 out -- and I thought I would announce it to everyone so you  
12 knew that the best estimate as to the total amount that's been  
13 involved in this is between 90 million and 100 million that --  
14 in loans.

15 That's my understanding and I was authorized -- Mr.  
16 Lock said -- said that he's trying to announce that and I -- I  
17 -- oh, and the people who were in with me saw no objection so  
18 I just want you to know that. The people who were in with me  
19 are excused and we'll get -- we'll be back to everybody  
20 eventually.

21 (Matter concluded, 11:32 a.m.)

22 \* \* \*

23

24

25

C E R T I F I C A T I O N

I, Diane Gallagher, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

\_\_\_\_\_  
DIANE GALLAGHER

\_\_\_\_\_  
DATE

DIANA DOMAN TRANSCRIBING, LLC